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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: OCT 08 2008

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Act,
8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guyana who entered the United States on January 7, 2003 at Miami, Florida with a fraudulent Guyanese passport and U.S. visa. She was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States by fraud or willful misrepresentation of a material fact. The applicant is the spouse of a Lawful Permanent Resident and the derivative beneficiary of an approved Petition for Alien Relative. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her husband.

The service center director concluded that the applicant failed to establish that she qualified for the waiver because she did not indicate that she was the spouse or daughter of a U.S. Citizen or Lawful Permanent Resident and denied the application accordingly. *See Decision of Service Center Director*, dated April 8, 2006.

On appeal, counsel asserts that Citizenship and Immigration Services (“CIS”) erred in denying the applicant’s application for adjustment of status and waiver application before first adjudicating her husband’s application for adjustment of status. *See Brief in Support of Appeal* at Paragraph 11. Counsel states that the decisions were premature because the applicant, as a dependent beneficiary of a Petition for Alien Relative filed on behalf of the applicant’s husband by his mother, was not eligible for adjustment of status unless her husband’s case was approved. *Id.* Counsel further states that the applicant’s husband’s application for adjustment of status was approved on April 20, 2006. *Id.* at Paragraph 12. Counsel additionally claims that the applicant and her husband are happily married and love each other very much, and her husband would suffer extreme hardship if she were removed from the United States. *Id.* at Paragraphs 13-14. In addition to affidavits submitted in support of the original waiver application, counsel submitted an additional affidavit from the applicant and her husband in support of the appeal. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

- (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a twenty-six year-old native and citizen of Guyana who has resided in the United States since January 7, 2003, when she was admitted at Miami, Florida after presenting a passport and visa belonging to another individual. The applicant's husband is a twenty-eight year-old native and citizen of Guyana who has been a lawful permanent resident of the United States since April 20, 2006. They currently reside together in Queens Village, New York.

Counsel asserts that the applicant's husband will suffer extreme hardship beyond the common results of deportation if the applicant is removed from the United States. Counsel states that the applicant and her husband love each other very much and "would be devastated and suffer hardship" if the applicant's waiver application were denied. *Brief in Support of Appeal* at Paragraph 14. In support of these assertions counsel submitted affidavits from the applicant, her husband, and her mother-in-law. The content of the affidavits is almost identical, and they all state that the applicant and her husband knew each other in Guyana and met again by chance after both had relocated to the United States. The affidavits state that they are "happily married and have worked hard to have a life together in the United States." See *affidavits from [REDACTED]*, [REDACTED] and [REDACTED] dated August 8, 2005. Affidavits from the applicant and her husband further state that the applicant's husband would not be able to survive without the added income of the applicant, they would be "destroyed emotionally" if they could not live together, and they cannot accomplish their goals, which include bettering their careers and having children, "without each other's love and support." See

Affidavits from [REDACTED] and [REDACTED] dated August 8, 2005. The AAO notes that no documentation of the applicant's income or the family's expenses was submitted to support the assertion that the applicant's husband depends on her income and would not survive without it. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Further, there is no indication that there are any unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of the applicant's removal. Living without the applicant's financial support therefore appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's husband. *See INS v. Jong Ha Wang, supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The applicant's husband states that he would be destroyed emotionally if he and the applicant could not live together. There is no evidence on the record, however, to establish that the emotional effects of being separated from the applicant are more serious than the type of hardship a family member would normally suffer when faced with his spouse's deportation or exclusion. Although the depth of his concern over the applicant's immigration status is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

The emotional and financial hardship the applicant's husband would suffer appears to be the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship). The applicant made no claim that her husband would experience hardship if he were to relocate with her to Guyana. Therefore, the AAO cannot make a determination of whether he would suffer extreme hardship if he moved to Guyana.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her Lawful Permanent Resident spouse as required under section 212(i) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.